NO. 90-1911

Supreme Court, U.S.
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In the
Supreme Court of the United States

OCTOBER TERM, 1990

CHARLENE LOEBER AND GLEN LOEBER
INDIVIDUALLY AND ON BEHALF OF HIS
MINOR DAUGHTER, GRETCHEN LOEBER

PETITIONERS,

v.

THE UNITED STATES OF AMERICA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEAL FOR THE FIFTH CIRCUIT

Respectfully submitted,
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QUESTIONS PRESENTED FOR REVIEW

1.

The United States of America, owner of the public vessel U.S.N.S. REGULUS, did not act in accordance with its obligations under 46 U.S.C. §740 in that it never made available to Petitioners an opportunity to obtain an administrative remedy for their injury claims.

2.

46 U.S.C. §740 should not operate to reduce the two year limitation period under 46 U.S.C. §745 to eighteen months without express Congressional authority.

3.

By relegating all injury claim matters to its marine contractor's protection and indemnity insurer before the Loebers' accident, the United States of America constructively denied all claims before they could be presented and rendered the six month administrative demand period under 46 U.S.C. §740 meaningless.

4.

Because Congress has not chosen to enact legislation shortening the two year limitation period of 46 U.S.C. §745 to eighteen months when an administrative demand is made between the eighteen month and second year anniversaries of an incident causing injuries, the courts should not do so.

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IN THE
SUPREME COURT OF THE UNITED STATES
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UNITED STATES OF AMERICA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

The Petitioners respectfully request that a Writ of Certiorari issue to review the March 6, 1991 opinion of the United States Court of Appeal for the Fifth Circuit. This opinion affirmed entry of summary judgment in favor of the United States of America by the United States District Court for the Eastern District of Louisiana. The opinion held, inter alia, that the two-year limitation period for bringing a suit against the United States of America under 46 U.S.C. §745 was not tolled during the six-month period in which Petitioners were required to wait after filing their administrative claims under 46 U.S.C. §740.

Petitioners respectfully suggest that the Fifth Circuit failed to consider whether the United States has its own responsibilities under 46 U.S.C. §740 which must be undertaken

before it can ask a district court to require a claimant to "turn square corners." Because the district court and the Fifth Circuit looked only to Petitioners' obligations under 46 U.S.C. §740 and did not consider properly that the government had, prior to the incident giving rise to the law suit, wholly divested itself of any interest in resolving injury claims in favor of its marine contractor's protection and indemnity insurer. Although the Fifth Circuit record excerpts clearly showed that the insurer's marine surveyor was on scene twelve hours after the accident and that Bay Tankers' insurance carrier had full charge of claim management before the June 13, 1988 incident, the district and appellate courts focused on Petitioners' actions and failed to investigate whether the government was remiss in its obligations.

Petitioners suggest that this Court should determine whether the provisions of 46 U.S.C. §740 can shorten the limitation period of 46 U.S.C. §745 by six months when a) Congress has not adopted this principle legislatively and b) where no §740 administrative remedy was ever available in the first place.

This Court should also determine if summary judgment is appropriate eighteen months and one day after an incident or whether the two-year limitation period under §745 will remain just that, a two-year period.

In order to resolve this deceptively simple but very important question, this Honorable Court must decide whether the district courts can judicially shorten the §745 limitation period without Congressional approval. It must also decide if the government has obligations it must honor before its unsueable and immune marine contractor's protection and indemnity insurer can protect its own pocketbook by raising a defense running in favor of the government. Said differently, when no administrative remedy involving public funds was ever available (because prior to the June 13, 1988 incident a protection and indemnity insurer had total charge of all claims), is it fair to allow an insurer of a non-liable government contractor to use a government defense to save its own money?

Petitioners suggest that for the government to enjoy the benefit of a §740 defense, two conditions must be met: it cannot have previously turned over claims management/settlement to its contractor's insurer and public funds must be at risk. Moreover, common experience shows that commercial insurers are in business to make money and are not readily disposed to settle large claims. Thus, Petitioners faced two obstacles to resolving their claims administratively: the government abdicated that responsibility to its contractor's insurer and that protection and indemnity insurer had no incentive to pay the claim.

When the Fifth Circuit focused only on Petitioners' statutory obligations under §740, it lost sight of the backdrop of the litigation and failed to analyze duties which Petitioners maintain are incumbent on the government. Petitioners do not attempt to suggest that an administrative claim was not a jurisdictional requirement under §740, or that their demand was not made until after the eighteen month anniversary of the June 13, 1988 incident. Rather, they suggest that the Court should view their actions in light of the fact that any consideration of their claims was in the hands of a commercial insurer which was not authorized by Congress to administer claims under the Public Vessels Act.

Justice demands that the Fifth Circuit's affirmance of the district court's grant of summary judgment be reversed. If the Petitioners must "turn square corners" so must the government.

This Court is asked to require the Fifth Circuit to consider the effect on Public Vessels Act claims when the government hands over administrative authority for claims to a commercial insurer before an incident occurs.

This Court is asked to require the Fifth Circuit to address the propriety of shortening the two-year limitation period to eighteen months without Congressional authority. This Court must also have the Fifth Circuit consider whether Congress' desire to allow a two-year period within which to sue operates to toll the limitation period if a §740 administrative claim is

made between the eighteenth and twenty-fourth month anniversaries of an incident giving rise to a claim.

Lastly, this Court is asked to place a question of fundamental fairness before the Fifth Circuit: can a governmental defendant with no money at risk enjoy the benefit of a judicially shortened limitation period when it, itself, has made timely administrative claims futile by handing over administration of such claims to a private insurance interest as part of a vessel management contract?

RELEVANT OPINIONS AND ORDERS BELOW

A) The April 6, 1990 Minute Entry of the Honorable George Arceneaux, United States District Judge for the Eastern District of Louisiana, granted summary judgment in favor of the United States of America pursuant to Federal Rule of Civil Procedure 56 on the basis of no administrative demand under 46 U.S.C. §740 having been made prior to the end of the eighteenth month of the two-year limitation period provided by 46 U.S.C. §745. "Appendix A".

B) Petitioners' July 18, 1990 Notice of Interlocutory Appeal pursuant to 28 U.S.C. §1292(a)(3) sought review by the Fifth Circuit of the April 6, 1990 grant of summary judgment in favor of the government and the June 22, 1990 denial without written reasons of Petitioners' motion for reconsideration of the summary judgment. "Appendix B".

C) The March 6, 1991 Opinion of the United States Court of Appeals for the Fifth Circuit forms the basis of Petitioners' Petition for Writ of Certiorari and upheld the district court's ruling that Public Vessels Act claims, ordinarily subject to a two-year statute of limitations under 46 U.S.C. §745, prescribe with the passage of eighteen months if a 46 U.S.C. §740 administrative demand is not made prior to the expiration of eighteen

months after an incident giving rise to a claim. "Appendix D".

JURISDICTION

The Opinion of the United States Court of Appeals for the Fifth Circuit affirming the district court's entry of summary judgment in favor of the United States of America was entered on March 6, 1991. The jurisdiction of the United States Supreme Court is invoked pursuant to 28 U.S.C. §1254(1). This Petition for Writ of Certiorari is timely under 28 U.S.C. §2101(c), if filed within ninety days of the Fifth Circuit's Opinion, i.e., on or before June 4, 1991.

STATEMENT OF PROCEEDINGS AND DISPOSITION

Petitioners, Charlene and Glen Loeber, and Glen Loeber on behalf of their minor daughter Gretchen, were injured when the unguarded roller at the pier-side end of the accommodation ladder of U.S.N.S. REGULUS, a public vessel owned by the United States, trapped the foot and leg of three year old Gretchen and began rolling up her body. Mr. and Mrs. Loeber sustained serious back injuries when they, along with other persons, lifted the 3,000 pound accommodation ladder off of Gretchen.

This incident occurred on June 13, 1988 and suit was filed on June 2, 1989 against the United States and Bay Tankers, Inc. the contract operator of the U.S.N.S. REGULUS. On November 9, 1989, the United States District Court for the Eastern District of Louisiana granted the government's motion to dismiss Bay Tankers as well as certain other claims which are not permissible against the government under the Public Vessels Act.

The March 6, 1991 Opinion of the Fifth Circuit states that during the course of a preliminary pre-trial conference on October 24, 1989, the government advised plaintiffs' counsel that petitioners had not satisfied a provision of 46 U.S.C. §740 requiring that an administrative claim be filed six months before instituting a suit. While it is true that, at that time, counsel for the government and Bay Tankers generally stated that jurisdiction was contested, the provision of §740 were never specifically referenced until the government filed its motion for summary judgment. To that extent, the Fifth Circuit Opinion is inaccurate and suggests specific conversations which did not occur.

On or after November 28, 1989, counsel for petitioners received a request for admission from the government which inquired whether petitioners had submitted an administrative claim prior to filing their lawsuit. Petitioners truthfully responded that an administrative demand had not been made. This was the principle event which alerted petitioners to the requirements of 46 U.S.C. §740 vis-a-vis an administrative demand.

On February 16, 1990, the government moved for summary judgment on the basis of petitioners' non-compliance with the six-month notice provision of 46 U.S.C. §740 prior to institution of suit against the government. By Minute Entry of March 6, 1990, the district court entered summary judgment in favor of the government and dismissed petitioners' claims against the United States. Thereafter, by Minute Entry of June 20, 1990, the district judge denied petitioners' request for reconsideration of the grant of summary judgment. On July 18, 1990, petitioners filed their notice of interlocutory appeal to the United States Court of Appeals for the Fifth Circuit pursuant to 28 U.S.C. §1292(a)(3).

On March 6, 1991, the United States Court of Appeals for the Fifth Circuit entered its Opinion affirming the district judge's grant of summary judgment. In an unrelated issue, dealing with pendent-party jurisdiction, the Fifth Circuit also reversed the district judge's ruling that an additional party could

not be added as a defendant. That pendent-party issue is not raised for this Court's consideration.

The Fifth Circuit's Opinion found that presentation of a written administrative demand under §740 is a jurisdictional prerequisite, that such administrative demands must be filed at least six months and one day before the expiration of the two-year statute of limitations, and that the two-year limitation period for bringing suit against the United States under the Admiralty Extension Act is not tolled during the six-month period claimants must wait after filing administrative claims and before filing suits against the government. Additionally, on the facts of the case, the Fifth Circuit also found that the statute of limitations for filing an Admiralty Extension Act claim against the United States was not equitably tolled.

ARGUMENT AND AUTHORITIES

The United States of America, owner of the public vessel U.S.N.S. REGULUS, did not act in accordance with its obligations under 46 U.S.C. §740 in that prior to their injuries it had already deprived petitioners of their opportunity to obtain an administrative remedy for their injury claims. As noted in *Pacific Bell v. United States*, 636 F.Supp. 312, 315 (N.D. Cal. 1986):

> "... [t]he primary purpose of the six month waiting period may be to allow the government time to consider a Plaintiff's claim prior to a lawsuit being filed."

Moreover, 48 U.S.Code Cong. Serv. 1898, 1901-02 relates that the purpose of the six month waiting period is to allow the government time to settle things and avoid litigation. Here, however, the government's contractor, Bay Tankers, Inc. provided protection and indemnity insurance coverage for the U.S.N.S. REGULUS. This practice was in place prior to the June 13, 1988 accident giving rise to this litigation. When the

Loebers sustained their injuries, administrative supervision of their claims did not devolve upon the government. Rather, a commercial insurance interest two steps removed from the government was already in place to deal with such matters. This insurance carrier, and not the government, had total responsibility for claims made against the U.S.N.S. REGULUS. Although this system did not prevent administrative claims from being forwarded to the U.S. Navy pursuant to 46 U.S.C. §740, it had the practical effect of rendering administrative demands moot and/or futile.

Unfortunately, the need to comply with §740's administrative claim requirement, a fruitless process considering the government had turned over claims' management to a protection and indemnity club with which it was not in privity, presented the government with a jurisdictional defense despite the futility of the administrative claim process. Furthermore, because the government's contractor, Bay Tankers, Inc., could not be sued under the provisions of the Public Vessels Act, 46 U.S.C. §781 et seq., there could be no action against the protection and indemnity insurer.

This resulted in a situation where the government contractor and its insurer were immune from suit, where the government had absolutely no money at risk, and where the real party at risk - the protection and indemnity club - could protect its money by raising a defense on behalf of a disinterested government.

Counsel for the government, in briefs submitted below, has repeatedly cited the "square corners" doctrine set forth in *Rock Island, Arkansas and Louisiana R. Co. v. United States*, 254 U.S. 141, 41 S.Ct. 55, 65 L.Ed. 188 (1920) wherein Justice Oliver Wendell Holmes said:

> "Men must turn square corners when they deal with the government. If it attaches even purely formal conditions to its consent to be sued those conditions must be complied with ..."

Petitioners respectfully suggest that if the "square corners" principle applies to them, it must apply with equal force to a government which seeks to obtain the benefit of that principle. In relation to this lawsuit, it means that if the government demands strict adherence to the administrative claim provision of 46 U.S.C. §740, it must make available an actual opportunity for administrative redress to be obtained.

Here, Bay Tankers' protection and indemnity insurer has not been authorized by Congress to administer claims arising under the Admiralty Extension Act or the Public Vessels Act. But for technical ownership of the vessel by the United States, this claim is no different than one asserted against a privately owned vessel enrolled in a P and I club.

Because the government waives its sovereign immunity in exchange for providing an administrative remedy, it stands to reason that the government cannot advance a "square corners" argument against petitioners when it hasn't lived up to its half of the deal.

Petitioners suggest that 46 U.S.C. §740 should not operate to reduce the two-year limitation period under 46 U.S.C. §745 to eighteen months without express Congressional approval. With deference and respect to the United States District Court for the Eastern District of Louisiana and the United States Court of Appeals for the Fifth Circuit, using the six month administrative demand period to shorten the two-year statute under §745 amounts to judicial legislation. If Congress had intended the two-year claim period applicable to the United States, which is already one year shorter than the general maritime statute available against private vessel interest, it would have written §745 to convey that intent.

Unfortunately, because of the principle of sovereign immunity and its limited waiver, the government traditionally has had a "home court" advantage in the Federal Court system. With the de facto reduction of the two-year limitation period under §745 to eighteen months, the playing field becomes uneven and a

claimant's time within which to file suit against the government is reduced to one-half the time available against a private defendant. Compounding this jurisprudentially-created inequity is the fact that claims against the vessel's manager and direct actions against its protection and indemnity insurer are forbidden as a matter of law.

Petitioners stress the fairness issue because many remedies traditionally available against private vessel interest defendants cannot be had against the government. For example, the government cannot be cast in punitive damages for an unseaworthy condition. The government cannot be tried by jury. Coupled with the reduced limitations period applicable to the federal defendant, this Court must insist that the government make available directly an administrative remedy without the interference of commercial insurance carriers before insisting that petitioners "turn square corners" and lose rights and remedies available against anyone else.

By relegating all injury claim matters to its marine contractor's protection and indemnity insurer, the United States effectively denied all claims before they could be presented and rendered the six-month administrative demand period under 46 U.S.C. §740 meaningless. As noted in *Hahn v. United States*, 218 F.Supp. 562, 565 (E.D. Va. 1963), "there may be circumstances under which a claim may be considered presumptively or constructively disallowed, thus permitting an action to be filed against the United States even though the entire waiting period for processing a claim has not expired." Petitioners suggest that this principle applies to the instant litigation regardless of whether an administrative demand was or was not filed prior to the eighteenth month anniversary of the June 13, 1988 incident.

The government has never been involved with this lawsuit. Less than twenty-four hours after the June 13, 1988 accident, representatives of the protection and indemnity insurer visited the vessel. No one has visited the vessel or contacted the Loebers on behalf of the United States Navy. By placing all

administrative considerations in the hands of its contractor's insurer, the government denied any and all claims before they occur because it has chosen not to take part in the claims process. The government has left claim administration in the hand of a commercial insurer which has no incentive to pay out its own money. A commercial insurer is not a government agency operating with public funds. Rather, it is a for-profit commercial entity as to which paying claims is counter-productive from a business profit standpoint.

Petitioners suggest the practice of allowing a commercial insurer to handle administrative claims is tantamount to a refusal to consider claims. As lawyers and judges everywhere know, the prospect of receiving a settlement from an insurance company usually are based upon the strengths and weaknesses of its defense and not the merits of a plaintiff's claim. These factors have nothing to do with the intent of §740 and governmental, administrative redress of legitimate injuries and claims. It is respectfully suggested that the Justices of this Court require the Fifth Circuit to examine the inequities created when the government abdicates its responsibility in favor of commercial insurers and determine whether the two-year limitation period runs when no governmental administrative remedy is available.

Because Congress has not chosen to enact legislation shortening the two-year limitation period of 46 U.S.C. §745 to eighteen months when an administrative demand is not made between the eighteenth month and second year anniversaries of an incident causing injuries, the Court should not do so and the limitation period under §745 should be tolled when an administrative claim is submitted after the eighteenth month but before the second anniversary of an incident.

If there is a focal point of the Fifth Circuit's March 6, 1991 Opinion, it is the court's reliance upon *Hahn, supra*. In *Hahn*, the cause of action arose on February 8, 1960. The plaintiff filed a written claim on January 30, 1962, and filed suit on February 7, 1962, one day before the limitation period

expired. *Hahn, supra* at 562. More than six months after filing the written claim, the plaintiff filed a second action alleging that the filing of their administrative claim tolled the two-year statute of limitations. *Id.*

The *Hahn* court recognized that the "six month waiting period required by 46 U.S.C. §740 may appear harsh and, in certain circumstances, may have the effect of reducing the statute of limitations to eighteen months." *Id.* at 567. The court found the relationship between the six-month waiting period and the two-year limitation period "consistent" because the limitation period "merely provides an outside limit within which the action may be maintained and does not preclude the application of shorter limitation periods where appropriate." *Id.*

While the Fifth Circuit believes the procedural background in *Hahn* to be similar to that in this case, the Fifth Circuit has overlooked one crucial fact. In *Hahn*, the government had not turned over the administrative claim process to a commercial insurance interest before the cause of action occurred. This is a critical distinguishing feature of the instant litigation. In *Hahn*, a government administrative remedy was available. In this case, it has never been available. Before the district court and Fifth Circuit held petitioners to a two-year statute of limitations, albeit one reduced to eighteen months, they should have determined first whether an administrative remedy was actually offered by the government.

Petitioners most strongly disagree with the Fifth Circuit's analysis that the six-month waiting period and the two-year limitation period are consistent because the limitation period provides an outside limit within which the action may be maintained and does not preclude application of a shorter limitation period where appropriate. This flies in the face of the logic attached to wavier of sovereign immunity. If federal sovereign immunity may only be waived by carefully worded statutes, there should be a statute which by explicit language states that the limitation period will be eighteen months under some circumstances.

Reducing the two-year limitation period to eighteen months "where appropriate and without any statutory forewarning" constitutes an unfair and harsh treatment of claimants. Moreover, the practice of reducing the two-year period to eighteen months is a creature of the district courts and not of legislation. Section 745 says claimants have two years to sue the government. Reducing that time period by six months in the absence of Congressional approval should be prohibited.

CONCLUSION

It is patently unfair for the government to insist that petitioners scrupulously adhere to the requirements of §740 when it, itself, has abdicated its administrative responsibilities to its marine contractor's insurance carrier. This Honorable Court should direct the Fifth Circuit to determine whether the government upheld its end of the bargain. If the Fifth Circuit determines that the government did not live up to its responsibilities under §740, the district judge's entry of summary judgment against petitioners should be reversed.

This Honorable Court should also direct the Fifth Circuit to end the practice of judicially shortening a two-year limitation statute to eighteen months. Submission of an administrative demand after eighteen months but before the second anniversary of an incident should not result in an automatic entry of summary judgment against an injured citizen. Rather, justice and compassion demand that their rights be preserved. Here, no administrative remedy was ever available and, if nothing else, the facts of this case suggest that the Fifth Circuit should have found the limitation period under §745 was tolled until such time as the government regained control of administrative matters from its contractor's insurer.

Petitioners pray that this Court issue a Writ of Certiorari directing the Fifth Circuit to reverse its affirmance of the district judge's grant of summary judgment thus allowing petitioners to proceed with their claims against the government.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Undersigned counsel for Petitioners hereby certifies that he has on this 3rd day of June, 1991, served a copy of the foregoing Petition for Writ of Certiorari on counsel for all parties to this proceeding, including Peter B. Thompkins, Esq., attorney for the United States of America, by mailing same by U.S. Mail, properly addressed, and first-class postage prepaid.

Richard M. Martin, Jr.

APPENDIX A

MINUTE ENTRY
ARCENEAUX, J.
APRIL 6, 1990

CHARLENE LOEBER, ET AL

VERSUS

UNITED STATES OF AMERICA
ET AL.

Before the Court is the Motion for Summary Judgment of the defendant United States of America ("United States") seeking dismissal of the claims against it. Having thoroughly reviewed the record, the memoranda of counsel and the law, the Court has determined that this Motion has merit for the reasons set forth hereinafter.

The issue present here is a deceptively simple one: Whether one who seeks relief against the United States pursuant to the Admiralty Extension Act,[1] must file an administrative claim with the appropriate federal agency and wait six months before instituting suit?

I. BACKGROUND

The facts in this matter are undisputed. The U.S.N.S. REGULUS ("REGULUS") is a naval supply vessel owned and operated by the United States. On June 13, 1988, the

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[1] 46 U.S.C. § 740 (1982).

REGULUS was moored at berth number five at the Violet Dock Port in Violet, Louisiana. The U.S.N.S. POLLUX ("POLLUX"), a sister ship of the REGULUS, was moored outboard of, and along side, the REGULUS. Plaintiff, Glen Loeber, was the First Assistant Engineer aboard the POLLUX, and on June 13, 1988, he was visited on the POLLUX by his wife, Charlene (also a plaintiff herein), and his two daughters, Gretchen - then age 3 (also a plaintiff herein), and Glennis - then age 12. At some point that evening, while Glen, Charlene and Gretchen were standing on the dock adjacent to the REGULUS, the REGULUS surged as a result of a wake from a passing vessel, which caused the accommodation ladder to roll across the dock. Unfortunately, the accommodation ladder struck Gretchen Loeber, knocked her down, and rolled up her legs. She suffered a broken right femur bone, and both parents claims personal injuries as a result of their efforts to extricate Gretchen from beneath the accommodation ladder.

On June 2, 1989, plaintiffs filed the instant litigation against the United States pursuant to 46 U.S.C. § 781 (1976) (the Public Vessels Act) seeking damages for the personal injuries allegedly sustained. On February 7, 1990, plaintiffs submitted a written claim to the United States Department of Navy, the federal agency owning and operating the REGULUS at the time of the incident.

In filing this motion the United States argues that this Court does not have jurisdiction over it. Since plaintiffs' injuries occurred on land adjacent to navigable water and were caused by a vessel on navigable water, it argues that jurisdiction is based on the Admiralty Extension Act. Pursuant to that statute, an individual must file a claim in writing to the appropriate federal agency owning the vessel and wait six months before filing suit against the United States. The United States asserts that since plaintiffs did not file a written claim with the Department of the Navy prior to instituting the present litigation, plaintiffs have failed to comply with the Act, and therefore, this Court lacks jurisdiction over the United States.

Additionally, the United States contends that the plaintiffs' action is time barred. It points out that 46 U.S.C. § 740 expressly adopts the Public Vessel Act[2] and Suits in Admiralty Act[3] and accordingly, a two year statute of limitation applies to plaintiffs' suit. Because the accident occurred on June 13, 1988, plaintiffs have until June 13, 1990 to file suit or their claims will be prescribed. Since the Admiralty Extension Act requires a plaintiff to wait six months after the filing of a written claim before suit can be filed, plaintiffs' failure to file a written claim before December 13, 1989, results in their claims being time-barred.

Plaintiffs aver that even if they technically failed to comply with requirements set forth in the Admiralty Extension Act, the lawsuit filed in June 1989 should be considered their written notice of claim. Alternatively, plaintiffs contend the Navy received notice through two accident reports sent by the captain of the REGULUS.

Finally, plaintiffs argue that because Glen Loeber is a seaman, his claims are not based on the Admiralty Extension Act, but rather the Jones Act, 46 U.S.C. § 688 (1982). Therefore, this Court has jurisdiction over Glen Loeber's claim even if jurisdiction does not exist under the Admiralty Extension Act.

II. DISCUSSION

ADMIRALTY EXTENSION ACT -
ADMINISTRATIVE CLAIM PREREQUISITE

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[2] 46 U.S.C. § 781 et seq. (1982).

[3] 46 U.S.C. § 741 et seq. (1982).

The district court is a court of limited jurisdiction and can only exercise that jurisdiction which is statutorily conferred upon it by Congress. It is well settled that the subject statutes not only confer jurisdiction, but also operate to waive sovereign immunity of the United States in admiralty suits. Williams v. Central Gulf Lines, 874 F.2d 1058 (5th Cir. 1989), cert denied, 110 S.Ct. 843 (1990).

Defendant is correct in its assertion that if this Court has jurisdiction over this matter, it is pursuant to 46 U.S.C. § 740.[4] The plain language of the Admiralty Extension Act indicates that it is applicable to the incident in question. The provision clearly states jurisdiction includes "all cases of damage or injury, to

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[4] The Admiralty Extension Act provides:

> The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.
>
> In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water: Provided, That as to any suit against the United States for any damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute the exclusive remedy for all causes of action arising after June 19, 1948, and for all causes of action where suit has not been hitherto filed under the Federal Tort Claims Act: Provided further, That no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing to the Federal agency owning or operating the vessel causing the injury or damage.

person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land." 46 U.S.C. § 740 (1976). Here the plaintiffs' injuries were caused by a vessel on navigable water, the REGULUS, and the injuries were inflicted on an adjacent dock.

The mere fact that the statute is applicable to the facts at hand, however, does not in and of itself confer jurisdiction on the Court. Plaintiffs must still have complied with the requirements of the Act. The provision clearly states "[t]hat no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing to the Federal agency owning or operating the vessel causing the damage." 46 U.S.C. § 740. Given the facts at hand it is apparent that plaintiffs have not met these requirements. Plaintiffs filed suit against the United States on June 2, 1989 and on February 7, 1990, or some eight months afterwards it submitted an administrative claim to the federal agency owning and operating the REGULUS.

Defendant is also correct in its contention that the plaintiffs' action is time barred. The Admiralty Extension Act expressly adopts the Public Vessel Act[5] and Suits in Admiralty Act[6] and accordingly, a two year statute of limitations applies to plaintiffs' suit. The provision clearly states "[t]hat as to any suit against the United States for any damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute the exclusive remedy for all causes of action arising after June 19, 1948." 46 U.S.C. § 740 (1982).

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[5] 46 U.S.C. § 781 et seq. (1982).

[6] 46 U.S.C. § 741 et seq. (1982).

One who files his action within the two year period prescribed by the Suits in Admiralty Act, but who fails to comply with the six month waiting requirement of the Admiralty Extension Act loses his action after the two year limitation period has expired. Pacific Bell v. United States, 636 F.Supp. 312 (N.D. Cal. 1986). See, Turner Terminals, Inc. v. United States, 177 F.2d 844 (5th Cir. 1949); Hahn v. United States, 218 F.Supp. 562 (E.D. Va. 1963). Moveover, the two year statute of limitations is not tolled by the receipt of written notice within that period. Id. Because the accident occurred on June 13, 1988, plaintiffs have until June 13, 1990 to file suit or their claims will be time-barred. Since the Admiralty Extension Act requires a plaintiff to wait six months after the filing of a written claim before December 13, 1989, results in their claims being prescribed.[7]

Plaintiffs contend that the lawsuit and the accident reports of the REGULUS constituted notice to the federal agency owning and operating the vessel. This argument fail for two reasons. The legislative purpose behind requiring notice of a claim six months before filing of suit is to allow the administrative agency investigating the claim an opportunity to decide whether to settle with the plaintiff or defend in court. See, 1948 U.S.Code Cong. Serv., 1898, 1901-02. Without sufficient notice of claim the agency cannot accurately investigate or make an informed decision.

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[7] The Court notes that counsel for the plaintiffs was made aware of these problems in November, 1989. Under these circumstances, the plaintiffs' suggestion that equitable tolling should apply is seriously undermined, even assuming its applicability.

The Federal Tort Claims Act[8], ("F.T.C.A."), like the Admiralty Extension Act, requires notice to a federal agency six months prior to filing suit against the United States. In Adams v. United States, 615 F.2d 284 (5th Cir. 1980), the Fifth Circuit held that under the F.T.C.A. notice of a claim was sufficient if it (1) enabled the agency to investigate the claim and (2) placed a value on the claim. Id. at 289. The accident reports and lawsuit do not constitute notice because they clearly do not meet these requirements. A federal agency, if they were to receive these could not accurately investigate or make an informed decision whether to settle with the plaintiff or defend in court.

The second reason why plaintiffs' contention must fail is inherent in the principle or sovereign immunity. Even if the Court were to recognize the accident reports and lawsuit as constituting notice of claim, plaintiffs still have not complied with the language of the statute. When the language of a waiver of sovereign immunity clearly imposes a condition upon plaintiff's right to sue the government, a court may not disregard that condition. United States v. Sherwood, 32 U.S. 584 (1941). See Pacific Bell, supra; Hahn, supra. Section 740 unambiguously requires a plaintiff to wait six months after filing a claim before filing suit. Plaintiffs have failed to fulfill that requirement. It is not the province of this Court to redraft the terms upon which the Congress waives the sovereign immunity of the United States. This Court, therefore, lacks jurisdiction to entertain the Loebers' suit.[9] Accordingly,

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[8] 28 U.S.C. § 2675 (1982).

[9] The Court notes that while Mr. Loeber has invoked the Jones Act, that claim alone fails to establish jurisdiction against the United States. Any recourse Mr. Loeber might have against the Government derives from the Federal Employees Compensation Act, 5 U.S.C. § 8101 et seq. (1982). See Johansen v. United States, 343 U.S. 427 (1952); Patterson v.

IT IS SO ORDERED that the Motion for Summary Judgment of the United States of America be granted.

/s/ GEORGE ARCENEAUX

United States, 359 U.S. 495 (1959) (per curiam); Turner v. Tennessee Valley Authority, 859 F.2d 412 (5th Cir. 1988) (en banc).

APPENDIX B

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

CHARLENE LOEBER, and GLEN LOEBER Individually and on behalf of his minor daughter, GRETCHEN LOEBER	CIVIL ACTION NO. 89-2483
VERSUS	SECTION "K"
UNITED STATES OF AMERICA and BAY TANKERS, INC.	MAG. DIV. (5)

NOTICE OF INTERLOCUTORY APPEAL

NOTICE is hereby given that Charlene Loeber, et al., Plaintiffs in the above-captioned matter, pursuant to the provisions of 28 U.S.C. § 1292 (a) (3), hereby take interlocutory appeal to the United States Court of Appeal for the Fifth Circuit from the Minute Entry of the Honorable George Arceneaux, Jr. which:

A.) Denied reconsideration of the April 6, 1990 Minute Entry granting summary judgment in favor of the United States; and

B.) Denied reconsideration of the April 24, 1990 Order denying Plaintiffs leave to file their Third Amended and Supplemental Complaint so as to add Violet Dock Port as an additional defendant under the theory of pendent-party jurisdiction.

The Minute Entry from which interlocutory appeal is sought was entered into the record of the above-captioned matter on June 22, 1990.

New Orleans, Louisiana, this 5th day of July, 1990.

Respectfully submitted,

/s/ RICHARD M. MARTIN, JR.
Richard M. Martin, Jr. #8998
CUMMINGS, CUMMINGS &
DUDENHEFER
416 Gravier Street
New Orleans, Louisiana 70130
Telephone: (504) 586-0000

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading has been served on all counsel of record by placing same in hand to them, this 18th day of July, 1990.

/s/ RICHARD M. MARTIN, JR.

APPENDIX C

MARCH 6, 1991 OPINION OF 5th CIRCUIT

Charlene LOEBER, and Glen Loeber, Individually and on behalf of their minor daughter, Gretchen Loeber, Plaintiffs-Appellants

v.

BAY TANKERS, INC., and United States of America, Defendants-Appellees.

No. 90-3537
Summary Calendar.

United States Court of Appeals,
Fifth Circuit.

March 6, 1991.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before JOHNSON, SMITH, and WIENER, Circuit Judges:

PER CURIAM:

The Plaintiffs-Appellants, Charlene and Glen Loeber, individually and on behalf of their daughter Gretchen Loeber, appeal the district court's order (1) sustaining the motion by the United States that summary judgment be granted, dismissing their suit against the United States for want of jurisdiction; and

(2) denying the Loebers' motion to file a third amended and supplemental complaint in which they sought to have the court exercise pendent-party jurisdiction over Violet Dock Port, Inc. We affirm the grant of summary judgment and reverse the denial of the motion to file an amended complaint.

I. OPERABLE FACTS

Plaintiff Glen Loeber was the first assistant engineer aboard the USNS POLLUX, a vessel owned by the United States. On June 13, 1988, the POLLUX was moored outboard of, and alongside, the USNS REGULUS, another vessel owned by the United States, which was moored at the Violet Dock Port in Violet, Louisiana. On that day while Glen's wife, Charlene, and his two daughters, Gretchen and Glennis, were visiting Glen and standing on the dock adjacent to the REGULUS, a wake from a passing merchant vessel, the M/V METEORA, allegedly caused the REGULUS to surge. That surge in turn caused the REGULUS' accommodation ladder to roll across the dock. The ladder struck Gretchen, knocked her down, and rolled along her legs, breaking her right femur bone. Both parents claim that they too sustained personal injuries while they were attempting to extricate Gretchen from beneath the ladder.

II. PROCEDURAL HISTORY

On June 2, 1989, seeking damages for their personal injuries, the Loebers filed the instant litigation pursuant to the Public Vessels Act (PVA), 46 U.S.C.App. § 781 et seq. (1976), against the United States and Bay Tankers, Inc., the contract operator of the REGULUS. On November 9, 1989, the district court granted the government's motion to dismiss the Loebers' claims against Bay Tankers, their punitive damage claim, their claim under the laws of the State of Louisiana, and their request for a jury trial, none of which are permissible under the PVA.

At a preliminary pretrial conference on October 24, 1989, the government advised that because the Loebers' injuries occurred on land adjacent to navigable water and were allegedly caused by a vessel on the Admiralty Extension Act, 46 U.S.C. App. § 740 (AEA) rather than on the PVA. The government charged that the Loebers had not satisfied the provision of the AEA that states, "no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing to the federal agency owning or operating the vessel causing the injury or damage." On November 21, 1989, the United States served a request for admission on the Loebers, asking them to admit that they had not filed a written claim with the Department of the Navy before they filed this suit. On December 19, 1989, the Loebers admitted that they had not filed a complaint. On February 7, 1990, the Loebers submitted a claim to the United States Department of the Navy.

Meanwhile, on December 30, 1989, the Loebers had also obtained leave of the district court to file their first amended and supplemental complaint in which they added as a defendant the owner of the M/V METEORA, Metropolitan World Maritime Corporation. They later filed a second amended and supplemental complaint in which they amplified their claims against Metropolitan and added Washington Aluminum Company as a new defendant.

On February 16, 1990, the United States moved for summary judgment seeking dismissal of the Loebers' claims for failure to comply with the requirements of the AEA. In a Minute Entry dated April 6, 1990, and entered April 9, 1990, the district court granted that motion. On April 24, 1990, the court denied the Loebers' motion for leave to file a third amended and supplemental complaint which sought to add Violet Dock Port, Inc. as a defendant under the theory of pendent-party jurisdiction.

On May 7, 1990, the Loebers filed a motion requesting the court to reconsider both its April 6th grant of summary judgment and its April 24th denial of leave to file the third amended and supplemental complaint. In a minute entry dated June 20, 1990, the court denied the motion for reconsideration. On July 18, 1990, the Loebers filed a notice of interlocutory appeal pursuant to 28 U.S.C. § 1292(a)(3) from the denial of reconsideration.

III. SUMMARY JUDGMENT

A. *Failure to File a Claim before Filing Suit*

Jurisdiction, if any, in this case rests upon the AEA. Section 740 unambiguously states that "jurisdiction of the United States shall extend to an include all cases of damage or injury, to person or property, caused by a vessel on navigable water, *notwithstanding that such damage has been done and consummated on land.*"[10] (emphasis added). Because the

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[10] The complete text of section 740 states:
The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land. In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water: Provided, That as to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute

REGULUS was a vessel on navigable water and allegedly caused the injuries to the plaintiffs while they were on an adjacent dock, the AEA clearly applies. *See Turner Terminals, Inc. v. United States*, 177 F.2d 844, 846 (5th Cir. 1949).

[1] The AEA further mandates that

> "no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing to the federal agency owning or operating the vessel causing the injury or damage."

46 U.S.C.App. § 740. The AEA's requirement that a written claim be presented six months before a suit is filed is jurisdictional. *Turner*, 177 F.2d. at 846; *Hahn v. United States*, 218 F.Supp. 562, 565 (E.D. Va. 1963) (citing *Turner*, 177 F.2d 844). The principle is well settled that when the sovereign consents to be sued, "the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." *United States v. Sherwood*, 312 U.S. 584, 586, 61 S.Ct. 767, 770, 85 L.Ed. 1058 (1941). The Loebers brought suit on June 2, 1989, over eight months before they submitted a written claim tot eh Department of the Navy, the federal agency owning the

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> the exclusive remedy for all causes of action arising after the date of the passage of this Act and for all causes of action where suit has not been hitherto filed under the Federal Torts Claims act: Provided further, That no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing to the Federal agency owning or operating the vessel causing the injury or damage.

REGULUS. Because the Loebers failed to comply with a jurisdictional requirement explicitly expressed in the controlling statute, the district court lacked jurisdiction to entertain their suit against the United States.

B. *Statute of Limitations*

[2] The Loebers' action against the United States is also time barred. The AEA states:

> That as to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act [46 U.S.C.App. § 741 et seq.], as appropriate, shall constitute the exclusive remedy of all causes of action....

46 U.S.C.App. § 740. Accordingly, a two-year statute of limitations applies, as neither side disputes, to the Loebers' suit against the United States. *See* 46 U.S.C.App. § 745 ("Suits as herein authorized may be brought only within two years after the cause of action arises...."); *McMahon v. United States*, 342 U.S. 25, 27, 72 S.Ct. 17, 19, 96 L.Ed.26 (1951) (two year statute of limitations contained in section 745 commences on date of injury).

As the Loebers' cause of action arose on June 13, 1988, they had until June 13, 1990, to file suit. Because the AEA mandates a six-month waiting period from the filing of a claim to the filing of a suit, the Loebers had until December 13, 1989, to submit a written claim to the Department of the Navy if they desired to file suit before the statutory period expired on June 13, 1990. By December 13th they had not done so; instead, they waited to submit a claim until February 7, 1990. Consequently, their claims are time barred.

The government notes that the Loebers filed two more complaints against the United States in this matter. Those

complaints are not part of the record on appeal. Nevertheless, we note that the filing of those complaints does not affect the outcome of this appeal. The Loebers apparently filed their second suit against the United States on June 12, 1990, one day before the two-year limitation period expired. They filed that suit, however, less than six months after they had submitted their claim to the Department of the Navy on February 7, so the Loebers again failed to comply with the jurisdictional requirement. *See Turner*, 177 F.2d at 846 ("Absent the presentation of the claim and the expiration of the period of six months, no purported suit against the United States...was within the jurisdiction of the admiralty court.").

The Loebers' third suit was filed on August 21, 1990, more than six months after submitting the claim to the responsible federal agency but also more than two years after the occurrence of the incident which, the Loebers allege, caused their injuries. The third suit too is time barred because the Loebers filed it over two months after the two-year limitation period had expired.

C. *Tolling the Limitation Period*

[3] The Loebers claim that the two-year limitation period should have tolled during the six-month waiting period. Two courts have already rejected that argument. *Port of Bremerton v. United States*, 1986 A.M.C. 2870, 2872, 1985 WL 8042 (W.D. Wash. 1985); *Hahn v. United States*, 218 F.Supp. 562 (E.D. Va. 1963). The procedural background in *Hahn* is similar to that in this case. The cause of action arose on February 8, 1960. The plaintiff filed a written claim on January 30, 1962, and filed suit on February 7, 1962, one day before the limitation period expired. *Hahn*, 218 F.Supp. 562. More than six months after filing the written claim, the plaintiff filed a second action alleging that the filing of their administrative claim tolled the two-year statute of limitations. *Id.*

The *Hahn* court recognized that the "six month waiting period required by 46 U.S.C.App. § 740 may appear harsh and, in certain circumstances, may have the effect of reducing the statute of limitations to 18 months." *Id.* at 567. The court, nevertheless, found the relationship between the 6-month waiting period and the two-year limitation period "consistent" because the limitation period "merely provides an outside limit within which the action may be maintained and does not preclude the application of shorter limitation periods where appropriate." *Id.* The court then declared that the action instituted before the plaintiff had complied with the waiting provisions of 46 U.S.C. App. § 740 failed as did the action filed after the limitation period prescribed in 46 U.S.C.App. § 745. *Id.* at 567.

The three cases that the Loebers cite to support their argument do not address whether an untimely claim under the AEA tolls the limitation period. *McCormick v. United Sates*, 680 F.2d 345 (5th Cir. 1982); *United States v. Core Laboratories, Inc.*, 759 F.2d 480 (5th Cir. 1985); and *Northern Metal Co. v. United States*, 350 F.2d 833 (3rd Cir. 1965). These cases do, however, recognize that limitation periods may be tolled because of "the plaintiff's innocence." *Northern Metal*, 350, F.2d at 837. Such "innocence" may render equitable tolling appropriate, this court has indicated, when the defendant induces the plaintiff to refrain from commencing suit or when fraudulent concealment occurs. *See McCormick*, 680 F.2d at 351. In *McCormick* we held that the two-year limitation in the Suits in Admiralty Act, 46 U.S.C.App. §745, can be tolled "under appropriate circumstances" when tolling does not "defeat the purpose of the provision, which is to encourage those with claims against the United States to present their claims properly and diligently," and when "injustice to the plaintiff would otherwise result." *Id.*

Tolling may also be appropriate, the third circuit has determined, when the plaintiff has timely submitted an administrative claim but cannot bring suit until he has exhausted administrative remedies and the government has not finally

adjudicated his claim within the limitation period. *See Northern Metal*, 350 F.2d at 838 n. 12 (suit filed more than two years after cause of action arose not barred under Suits in Admiralty Act, 46 U.S.C.App. § 745, because government's not finally adjudicating plaintiff's administrative claim during two years since action arose prevented his timely filing suit). Unlike the plaintiff in an AEA suit who, before filing suit, has merely to wait six months after filing a claim with an agency, the plaintiff in *Northern Metal*, who submitted a claim pursuant to the dispute clause of his contract with the government, could not appeal to the courts until he had exhausted his administrative remedies. *See Id.* at 838 n. 11, n. 12. Finally, tolling may be appropriate when the defendant engages in "improper dilatory tactics," *see Core*, 759 F.2d at 484 (holding five-year limitation period in 28 U.S.C. § 2462 runs from date of predicate violation not from date of administrative assessment of sanction).

[4] In the instant case, the government did not engage in any of the tactics that might warrant equitably tolling the statutory period. In fact, to the contrary, the government notified the Loebers that the time for filing an administrative claim was slipping away. Furthermore, the Loebers are not "innocent." *See Northern Metal*, 350 F.2d at 837. Within a matter of days following the accident they retained counsel. The latter could then have filed a written claim, waited six months, and still have had well over a year remaining in the two-year limitation period in which to file suit. Even more detrimental to the Loebers' claim that the period should have tolled is their having been put on notice in late October 1989 that jurisdiction was in question. Additionally, on November 21, 1989, the United States served the Loebers with a request for admission that they had not submitted a written claim. Had the Loebers promptly submitted a written claim in response to either of those notices, they could still have satisfied the waiting period of 46 U.S.C.App. § 740 and the limitation period of 46 U.S.C.App. § 745. Instead, they inexplicably chose to wait to file their written claim until February 7, at which time they had no

possibility of satisfying the waiting period before the limitation period expired.

D. *Constructive Denial of Administrative Claim*

The Loebers contend that an administrative remedy was unavailable because the Department of the Navy had passed responsibility for settling claims and avoiding litigation to the insurer of Bay Tankers, Inc., the operators of the REGULUS, on June 14, 1988, the day after the accident.[11] As a consequence, they argue, their claim was constructively denied as of June 13, 1988. No evidence supports the Loebers' contention, especially as they failed to file a charge before filing suit. The purpose of the requirement that plaintiffs submit a claim and wait six months before bringing suit is to allow the United States to decide whether to settle the claim or pass it on to underwriters to settle or defend. In not filing a claim with the Department of the Navy before they filed suit, the Loebers denied the government that option. By the time they submitted their claim and waited for the six-month period to pass within

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[11] That the underwriters were surveying the accident scene a day after the accident does not mean that the United States had already constructively denied a claim. To the contrary, the information that the underwriter garnered might have served the United States in evaluating the Loebers' claim had they timely submitted it.

Furthermore, the government's later action does not indicate that they had handed authority over to the underwriter. The government notified the Loebers that jurisdiction was lacking in plenty of time for them to submit a claim and still satisfy the waiting and limitations periods.

which the government might have investigated the claim and decided whether to settle with the plaintiff or defend in court, the limitation period had expired.

The Loebers' reliance upon *Lee v. United States*, 183 F.Supp. 49 (E.D. Va. 1960), in support of their contention is misplaced. The claim in *Lee* was brought under regulations issued by the War Shipping Administration. *See Pacific Bell v. United States*, 636 F.Supp. 312, 315 (N.D. Cal. 1986). Unlike the AEA, the regulations at issue in *Lee* permitted a suit to be filed only after a claim had been filed and disallowed. *Id.* at 51. Unlike the Loebers, the plaintiffs in *Lee* did file a claim before filing suit. *Id.* at 50. Unlike the Loebers, the plaintiff in *Lee* had satisfied the jurisdictional requirements imposed upon him; but the government forwarded his claim to its underwriters without formally denying the claim, thereby precluding the plaintiff's bringing suit. *Id.* at 51. The insurers in turn never communicated with the plaintiff during the limitation period. *Id.* Because the Loebers never filed an administrative claim before they filed suit, their contention lacks merit.

E. *Failure to Challenge Unavailability of Remedy Charge*

[5] The Loebers also argue that by not challenging in its reply memorandum the unavailability of an administrative remedy, an issue which the Loebers had raised in their Local Rule 2.10 Statement of Material Facts, the government should be deemed to have admitted those facts. As the government correctly points out, however, local rule 2.10 does not require the movant to respond to the nonmovant's statement of material facts to which there exists a genuine issue to be tried. To the contrary, the rule requires the nonmovant to file such a statement; if he fails to do so, the material facts which the movant asserts will be deemed admitted.

IV. PENDENT-PARTY JURISDICTION

In denying the Loebers' motion for leave to file an amended and supplemental complaint to add Violet Dock Port, Inc. (Violet) as a party defendant, the district court declined to exercise pendent-party jurisdiction over a party against whom, as the Loebers concede, no independent basis for federal jurisdiction exists. As no federal question is involved, jurisdiction does not lie under 28 U.S.C. § 1331; as the citizenship of the parties is not diverse, jurisdiction does not lie under 28 U.S.C. § 1332; as the claim against Violet is grounded on state law, the district court has jurisdiction over the claim against Violet only if pendent-party jurisdiction is available in admiralty cases. The district court has jurisdiction over Metropolitan under Article III, section 2 of the constitution and under 28 U.S.C. § 1333(1).

We have previously held that "a federal court entertaining a maritime claim has the discretion to adjudicate non-federal claims derived from a common nucleus of operative fact, including claims against a party not before the court in the federal action." *Feigler v. Tidex, Inc.*, 826 F.2d 1435, 1439 (5th Cir. 1987). However, because the Supreme Court's decision in *Finley v. United States*, 490 U.S. 545, 109 S.Ct. 2003, 104 L.Ed.2d 593 (1989), places in question the doctrine of pendent-party jurisdiction in any context, we must examine anew whether the doctrine survives in admiralty cases. Fortunately, we have the guiding wisdom of the second circuit on this very question to enlighten our analysis. *See Roco Carriers, Ltd. v. M/V Nurnberg Express*, 899 F.2d 1292 (2nd Cir. 1990).

In *Finley*, the Supreme Court held that pendent-party jurisdiction is unavailable when the primary claim is brought under the Federal Torts Claims Act (FTCA), 28 U.S.C. § 1346(b). 109 S.Ct. at 2010. More generally, it declared that the inquiry into whether pendent jurisdiction exists over a different nondiverse defendant on a nonfederal claim does not

end with an inquiry into whether the federal and state claims derive from a common nucleus of operative fact. *Finley*, 109 S.Ct. at 2007 (citing *United Mine Workers v. Gibbs*, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966). Federal courts must additionally examine "the posture in which the nonfederal claim is asserted and the specific statute that confers jurisdiction over the federal claim." *Id. (quoting Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 373, 98 S.Ct. 2396, 2402, 57 L.Ed.2d 274 (1978).

In terms of the relevant statutory grants of jurisdiction, the second circuit has distinguished an action brought into federal court pursuant to the court's admiralty jurisdiction and one, such as in *Finley*, sought to be brought in pursuant to FTCA. *Roco*, 899 F.2d at 1295. In the latter action jurisdiction is predicated upon a waiver of sovereign immunity permitting tort claims against the United States, and such jurisdictional grants are ordinarily interpreted narrowly. *Id.* (citing *Sherwood*, 312 U.S. 584, 590, 61 s.Ct. 767, 771, 85 L.Ed. 1058 (1941). In contrast, waiver of sovereign immunity is not an issue in the Loebers' action, their claims against the United States having been dismissed. Consequently, the "posture" or the context in which the Loebers assert their nonfederal claim against Violet is entirely different from the posture described in *Finley*. *See* 109 S.Ct. at 2007-08.

The Court in *Finley* declared that "'neither the convenience of the litigants nor considerations of judicial economy can suffice to justify'" jurisdiction over state law claims involving additional parties without an independent basis for jurisdiction. *Id.* at 2008 (quoting *Kroger*, 437 U.S. 365, 376-77, 98 S.Ct. 2396, 2404, 57, L.Ed.2d 274 (1978). But the policy of permitting claims arising in admiralty to be resolved in a single setting entails, as the court in *Roco* noted, more than the mere convenience of the parties. *See Roco*, 899 F.2d at 1296. The policy arises, instead, from the historical recognition that maritime claims in particular should be subjected to efficient and uniform procedures and treatment. *Id.* (citing *In re Oil Spill by*

Amoco Cadiz off Coast of France, 699 F.2d 909, 913-14 (7th Cir.), *cert. denied sub nom. Astilleros Espanoles, S.A. v. Standard Oil Co.*, 464 U.S. 864, 104 S.Ct. 196, 78 L.Ed.2d 172 (1983).

Resolution of pendent-party jurisdiction, the Court in *Finley* emphasized, demands "'careful attention to the relevant statutory language.'" *Finley*, 109 S.Ct. at 2007 (quoting *Aldinger v. Howard*, 427 U.S. 1, 17, 96 S.Ct. 2413, 2421, 49 L.Ed.2d 276 (1976). The language of the relevant statutory grants of jurisdiction in *Finley* and in the Loebers' case differs substantially. *See Roco*, 899 F.2d at 1296. The Supreme Court emphasized that the grant in the FTCA of jurisdiction over "claims against the United States," 28 U.S.C. § 1346(b), was limited to claims against a specific party, the United States. The Court held, therefore, that the statute defines jurisdiction "in a manner that does not reach defendants other than the United States." *Finley*, 109 S.Ct. at 2009. But the statute supplying admiralty jurisdiction is "strikingly broad." *Roco*, 899 F.2d at 1296. It confers admiralty jurisdiction over "[a]ny civil case of admiralty or maritime jurisdiction...." 28 U.S.C. § 1333(1).

The admiralty statute does not limit jurisdiction to a particular party, as to the FTCA and the Federal Employers' Liability Act (FELA), 45 U.S.C. § 51 et seq., 56. *See Lockard v. Missouri Pac. R.R. Co.*, 894 F.2d 299 (8th Cir. 1990 (45 U.S.C. § 51 imposes liability on "[e]very common carrier by railroad"); *see also Iron Workers Mid-South Pension Fund v. terotechnology Corp.*, 891 F.2d 548, 551 (5th Cir. 1990) (no pendent-party jurisdiction under Employee Retirement Income Security Act, 29 U.S.C. § 1132(e), over state law claim to enforce lien). Neither does the act limit jurisdiction to a certain category of claims. Instead, it provides jurisdiction over an admiralty "case." 28 U.S.C. § 1333(1).

Therefore, unlike the FTCA which "confers jurisdiction over 'claims against the United States and no one else,' *Finley*, 109 s.Ct. at 2008, admiralty jurisdiction extends to an entire

case, including non-admiralty claims against a second defendant." *Roco*, 899 F.2d at 1296. *See Nolan v. Boeing Co.*, 919 F.2d 1058, 1064 (5th cir. 1990) (in contrast to *Finley* which confers jurisdiction only over *"claims,"* Foreign Sovereign Immunity Act (FSIA) provides jurisdiction over *"action* against a foreign state" (emphasis added) and, therefore, includes claims against parties other than foreign state); *Teledyne, Inc. v. Kone Corp.*, 892 F.2d 1404, 1409 (9th cir. 1989) (FSIA provides pendent-party jurisdiction). That the admiralty statute uses "case" and not "action" as in the FSIA is a distinction without a difference. This court has recently reiterated that "[i]n federal practice the terms refer to the same thing, i.e., the entirety of a civil proceeding." *Nolan*, 919 F.2d at 1066.

[6] In conclusion, we agree with the second circuit, *Roco*, 899 F.2d at 1297, that "[i]n light of the broadly worded jurisdiction over admiralty cases and 'the strong policy in favor of providing efficient procedures for resolving maritime disputes,' *In re Oil Spill*, 699 F.2d at 914, we see no reason at this juncture to depart from the established rule of this Circuit that pendent party jurisdiction is available in the unique area of admiralty." Accordingly, we hold that the district court erred in not allowing the Loebers to amend their compliant to add Violet.

V. CONCLUSION

Because the Loebers failed to comply with the requirement in the AEA, 46 U.S.C.App. § 740, that they file a claim with the appropriate federal agency and then wait six months before filing suit, the district court correctly granted summary judgment in favor of the United States. The Loebers' action is also time barred. A plaintiff who files an action within the two-year period prescribed by 46 U.S.C.App. § 745 (Suits in Admiralty Act), but who fails to comply with the six-month requirement of the AEA loses his action after the two-year limitation period has expired.

Because the admiralty jurisdiction statute broadly bestows jurisdiction over "[a]ny civil case of admiralty or maritime jurisdiction" and because courts have historically acknowledged the pressing need to subject all claims in admiralty to efficient and uniform procedures, the district court properly has pendent-party jurisdiction over Violet Dock Port, Inc. Accordingly, the order of the district court granting summary judgment in favor of the United States is AFFIRMED, and its order denying the Loebers leave to file an amended complaint in which they add Violet Dock Port, Inc. is REVERSED and the case REMANDED for further proceedings consistent with this opinion.

APPENDIX D

TEXT OF RULE 56(c)

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

APPENDIX E

28 U.S.C. §1254

§1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any questions of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

APPENDIX F

28 U.S.C. §1292(a)(3). Interlocutory decisions.

(a) Except as provided in subsequent (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

(3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed.

APPENDIX G

TEXT OF 28 U.S.C. §2104(c)

28 U.S.C. §2104(c) Supreme Court; time for appeal or certiorari; docketing; stay

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

APPENDIX H

TEXT OF 46 U.S.C. §740

46 U.S.C. §740 Extension of admiralty and maritime jurisdiction; libel in rem or in personam; exclusive remedy; waiting period

The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

In any such case suit may be brought in rem or in personam according to principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water: Provided, That as to any suit against the United States or damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute the exclusive remedy for all causes of action arising after June 19, 1948, and for all causes of action where suit has not hitherto been filed under the Federal Tort Claims Act: Provided further, That no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing to the Federal agency owning or operating the vessel causing the injury or damage.

APPENDIX I

TEXT OF 46 U.S.C. §745

46 U.S. C. §745 Causes of action for which suits may be brought; limitations; exceptions; actions which may not be revived; interest on claims

Suits as authorized by this chapter may be brought only within two years after the cause of action arises: Provided, That where a remedy is provided by this chapter it shall hereafter be exclusive of any other action by reason of the same subject matter against the agent or employee of the United States or of any incorporated or unincorporated agency thereof whose act or omission gave rise to the claim: Provided further, That the limitations contained in this section for the commencement of suits shall not bar any suit against the United States brought hereunder within one year after December 13, 1950 if such suit is based upon a cause of action whereon a prior suit in admiralty or an action at law was timely commenced and was or may hereafter be dismissed solely because improperly brought against any person, partnership, association, or corporation engaged by the United States to manage and conduct the business of a vessel owned or bareboat chartered by the United States or against the master of any such vessel: And provided further, That after June 30, 1932, no interest shall be allowed on any claim prior to the time when suit or such claim is brought as authorized by section 742 of this title unless upon a contract expressly stipulating for the payment of interest.

APPENDIX J

TEXT OF 46 U.S.C. §781

46 U.S.C. §781 Libel in admiralty against or impleader of United States.

A libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to the public vessel of the United States: Provided, That the cause of action arose after the 6th day of April, 1920.